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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 133

MAURICE STEINGOLD, Executor of the Estate of
SAMUEL A. STEINGOLD, Deceased,

Petitioner,

—against—

Petition No. 6

ROLLS-ROYCE, INC.,

Respondent.

MAURICE STEINGOLD, Executor of the Estate of
SAMUEL A. STEINGOLD, Deceased,

Petitioner,

—against—

Petition No. 7

ROLLS-ROYCE, LTD.,

Respondent.

PETITIONERS' REPLY TO BRIEF FOR RESPONDENTS ROLLS-ROYCE, INC., AND ROLLS-ROYCE, LTD., (PETITIONS No. 6 and 7)

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TABLE OF CONTENTS

	PAGE
EQUITABLE ESTOPPEL	2
ERROR IN RESPONDENTS' STATEMENT	2
PETITIONERS WERE DENIED THEIR SUBSTANTIVE RIGHTS	2
REVIEW OF APPELLATE DIVISION ORDERS HAS NOT BEEN SOUGHT	3
RESPONDENTS ERR ON THE LAW	4
A. Timeliness of Raising Federal Question	5
B. Property Right in Cause of Action	5
C. Respondents Becloud Real Question in Issue Herein	7
CONCLUSION	8
APPENDIX:	
E—Copy of Order With Notice of Entry Served By Respondent Rolls-Royce, Inc. (On December 13, 1963)	11
E—Copy of Order With Notice of Entry Served By Respondent Rolls-Royce, Ltd. (On December 13, 1963)	15

Cases Cited

Aero Design & Eng. Co. v. Oklahoma Emp. S. Com'n, 151 F. Supp. 844, affd, 353 U. S. 943, 77 S. Ct. 824	7
Am. Surety Co. v. Baldwin, 287 U. S. 156, 53 S. Ct. 98	5

PAGE

Bartone v. United States, —— U. S. ——, 84 S. Ct. 21 9

Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673..... 5, 6

Broderick v. Rosner, 294 U. S. 629, 55 S. Ct. 589..... 5

Cochran v. Kansas, 316 U. S. 255, 62 S. Ct. 1068..... 8

Dept. of Banking v. Pink, 317 U. S. 264..... 4

Erie v. Tompkins, 304 U. S. 64, 58 S. Ct. 817..... 8fn

Estate Property Corporation v. Hudson Coal Co., 259 A. D. 546, 19 N. Y. S. 2d 857, affirmed on opinion, 284 N. Y. 772.....10c fn

Gibbes v. Zimmerman, 290 U. S. 326, 54 S. Ct. 140.... 5, 7

Hanna v. Home Ins. Co., 281 F. 2d 298 (5th Cir.), cert. den., 365 U. S. 838, rehearing denied, 366 U. S. 955, 81 S. Ct. 1905..... 5

Hughes v. Fetter, 341 U. S. 609, 71 S. Ct. 980 5

Irvin v. Dowd, 359 U. S. 394, 79 S. Ct. 825..... 8

Israel v. Wood-Dolson, 1 N. Y. 2d 116.....10d fn

Lauterbach v. Fleischer, 16 A. D. 2d 701, 227 N. Y. S. 2d 726..... 7

Musser v. State of Utah, 333 U. S. 95, 68 S. Ct. 397... 6, 8

National Union, etc. v. Arnold, 348 U. S. 37, 75 S. Ct. 92 8

Pritchard v. Norton, 106 U. S. 124, 1 S. Ct. 102..... 5, 7

Szuchy v. Hillside Coal & Iron Co., 150 N. Y. 219.... 7, 8

Taca v. Rolls Royce, Limited, Rolls Royce, Inc., Capital Airlines, Inc. and United Airlines, Inc., decided by the Appellate Division, First Department, published July 15, 1964, New York City Law Journal .....9fn, 10b fn, 10c fn, 10d fn

PAGE

United States Constitution Cited

Fourteenth Amendment 5, 7, 8

Statute Cited

CPLR:

5513 ..... 2, 3

5514 2-4

5514(a) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1165

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,

Petitioner,

—against—

ROLLS-ROYCE, INC.,

Respondent.

[PETITION No. 6]

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,

Petitioner,

—against—

ROLLS-ROYCE, LTD.,

Respondent.

[PETITION No. 7]

PETITIONERS' REPLY TO BRIEF FOR RESPONDENTS ROLLS-ROYCE, INC., AND ROLLS-ROYCE, LTD., (PETITIONS No. 6 and 7)

To the Justices of the Supreme Court of the United States:

Petitioner herewith replies to the brief (in opposition to petitions numbered 6 and 7) by respondents Rolls-Royce, Inc., and Rolls-Royce, Ltd.

Equitable Estoppel

Despite respondents' statement (p. 3) that no ruling has yet been made as to the amenability of Rolls-Royce, Ltd., to District Court jurisdiction in Virginia, it would appear respondent Rolls-Royce, Ltd., would be estopped, on equitable principles, from now taking a position contrary to its District Court position on that issue in this proceeding.

Error In Respondents' Statement

In total disregard of the clear provisions of CPLR 5513 and 5514 (see Pet. Appendix A, pp. 11-12), which allow petitioners 30 days time, after service of a copy of the subject orders with notice of entry, to move for leave to appeal to the Court of Appeals, respondents erroneously allege that petitioners' time expired on December 27, 1963 (p. 3).

CPLR 5513 provides that the 30 day period starts to run, not from the date of the order itself, but from the date of service of a copy of the order with notice of entry.

Similarly, CPLR 5514, sub-par. (a), which provides for an alternate method of appeal in the event an erroneous method is first selected, incorporates the time provisions of CPLR 5513, *i.e.* 30 days from service of a copy of the order with notice of entry.

Petitioners were Denied their Substantive Rights

Dismissal of petitioners' motion for leave to appeal on the ground of untimeliness when, in fact, the motion was timely, constituted a denial of the equal protection of the law and deprived petitioners of due process, the provisions of CPLR 5513 and 5514 being available to all litigants within the State of New York but having been denied to petitioners.

Respondents served their copies of the relevant orders with notice of entry on petitioners by mail, on December 13, 1963. The notices of entry are dated December 13, 1963[1], verifying mailing thereof no earlier than said date of December 13, 1963.

By virtue of the said provisions of CPLR 5513 and 5514, petitioners had 33 days from December 13, 1963 (3 additional days having been added to the 30 days, pursuant to New York Law, by reason of respondents effecting service by mail) to move for leave to appeal (*i.e.*, until January 15, 1964).

The subject motion for leave to appeal was made on January 10, 1964, as correctly stated in respondents' brief (page 3, last paragraph).

The subject motion, therefore, was clearly within time, and respondents' charge (page 5, last paragraph) that petitioners were dilatory is without foundation.

It is clear that respondents viewed CPLR 5513 and 5514 in the same manner as contended herein, otherwise their said service of notice of entry was meaningless and served no purpose. It is, and has been, traditionally used in New York practice to establish a cut-off date for time to appeal.

Review of Appellate Division Orders Has Not Been Sought

In addition to the errors hereinabove pointed out in respect to respondents' 'Statement', respondents erroneously argue, on page 4, that petitioners are seeking a writ of *certiorari* to the wrong court, contending that petitioners' writ should be directed to the Appellate Division, Second Department.

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[1] See Appendix E *infra*, pp. 11-18 for subject orders with notice of entry served on petitioners.

This contention overlooks the prayer on page 2 of the petition "that a writ of *certiorari* issue * * * to review the orders of the New York State Court of Appeals entered in the above entitled cases on February 20, 1964.", as well as the "Conclusion".

The writ is not misdirected in this instance, as the record is in the custody of the Supreme Court of the State of New York, Kings County, although review is sought of the orders of the New York State Court of Appeals, petitioners having relied on the authority of *Dept. of Banking* v. *Pink*, 317 U. S. 264, 267.

Further, it appears that subject respondents misinterpret the purpose of the petition, which appears to be clearly and adequately set forth on page 7 of the petition under "Reasons For Granting The Writ", wherein it is clearly stated that the failure of the Court of Appeals to allow petitioners the benefit of the provisions of CPLR 5514 is the basis for requesting the writ.

This clearly does not involve a review of the decision of the Appellate Division.

It would appear, therefore, that, in view of what is set forth under "Reasons For Granting The Writ" and in the "Conclusion" to the petition (on pages 9 and 10 thereof), there is no basis for respondents' apparent confusion in contending that a review is sought of the Appellate Division orders and that the writ would be misdirected if directed to the Kings County Supreme Court.

Respondents Err on the Law

Respondents' brief proposes several erroneous concepts of constitutional law.

These concepts are erroneous and directly contrary to specific holdings of this Court, to wit:

A. Timeliness of Raising Federal Question

On page 4, respondents mistakenly rely on *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 677-8, for the erroneous contention that "Petitioner • • • cannot raise any Federal question for the first time in this Court.", when, to the contrary of respondents' contention, this Court held, in effect, in *Brinkerhoff-Faris* that a federal question is timely raised if raised at the first opportunity to do so (at p. 678).

See also *Am. Surety Co.* v. *Baldwin*, 287 U. S. 156, 164, 53 S. Ct. 98, 101, where, as here, the federal question was raised in this Court for the first time due to an unanticipated disposition below which threatened rights under the Federal Constitution.

B. Property Right in Cause of Action

On page 5, respondents erroneously contend that "An erroneous interpretation of a procedural statute by a State Court in no manner affords this Court grounds for the granting of certiorari.", thus completely overlooking the impact of the Fourteenth Amendment in protecting a litigant's property right in his cause of action (*Pritchard* v. *Norton*, 106 U. S. 124, 132, 1 S. Ct. 102; *Gibbes* v. *Zimmerman*, 290 U. S. 326, 332, 54 S. Ct. 140, 142), and the impact of the 'Full Faith and Credit Clause', where, as here, the cause of action arises under the laws of a sister State (*Hughes* v. *Fetter*, 341 U. S. 609, 611-2, 613, 71 S. Ct. 980, 982, 983; *Broderick* v. *Rosner*, 294 U. S. 629, 642, 55 S. Ct. 589, 592).

Further, in *Hanna* v. *Home Ins. Co.*, 281 F. 2d 298, 303 (5 Cir.), cert. den. 365 U. S. 838, rehearing denied, 366 U. S. 955, 81 S. Ct. 1905, it was clearly held that federal courts may review a state court's error if the error constitutes a deprivation of federal rights.

Respondents' erroneous contention in this regard is unequivocally refuted by an authority relied on by respondents, *Brinkerhoff-Faris Co.* v. *Hill, supra,* 281 U. S. 673, 679-680, 682.[2]

In further contending that this Court "must accept the decision of the highest Court of a State fixing the meaning of State legislation", respondents overlook the statement of this Court in *Musser* v. *State of Utah,* 333 U. S. 95, 68 S. Ct. 397 (relied on by respondents), that "we are not at liberty to disregard the explicit holding of the State Court as to the basis of its decision except for convincing reasons, * * *".

In addition to the fact that the State Court (New York State Court of Appeals) did not give its holding as to the basis for its decision, since the decision was without opin-

---

[2] "Second. If the result above stated [deprivation of property by denial of remedy by state court] were attained by an exercise of the State's legislative power, the transgression of the due process clause of the Fourteenth Amendment would be obvious. *Ettor* v. *Tacoma,* 228 U. S. 148.[4] The violation is none the less clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid (First National Bank of Greeley v. Weld County, 264 U. S. 450) state statute. The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government.[5]" (at pp. 679-680)

"* * * while it is for the state courts to determine the adjective as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.[9]" (at p. 682)

ion, it is further respectfully submitted that the convincing reasons which this Court requires to act herein are found in the protection guaranteed by the Fourteenth Amendment that petitioner's cause of action may not arbitrarily be interfered with, and the 'Full Faith and Credit Clause' requiring New York to honor the cause of action arising under Virginia law.

In this regard, New York law holds that a litigant's cause of action is a substantive right (*Lauterbach* v. *Fleischer*, 16 A. D. 2d 701, 227 N. Y. S. 2d 726, 727-8), and federal law holds that a cause of action is a property right which is protected by the due process provisions of the Fourteenth Amendment. (*Pritchard* v. *Norton, supra*, p. 5; *Gibbes* v. *Zimmerman, supra*, p. 5).

C. Respondents Becloud Real Question in Issue Herein

Respondents' further contention that "no federally protected right exists guaranteeing to a litigant the right to have an appeal heard by the highest court of the State", disregards the real question at issue herein.

The Fourteenth Amendment gives to this litigant the right to have his appeal on constitutional questions heard by the highest court of the State, as all other litigants are given such a right which has been denied to this litigant.

In further refutation of respondents' contention in this regard is *Aero Design & Eng. Co.* v. *Oklahoma Emp. S. Com'n*, 151 F. Supp. 844, aff'd 353 U. S. 943, 77 S. Ct. 824, which holds that petitioner's day in Court includes the right to be heard in the Court of last resort on constitutional questions.

There is no statement of authority in the case relied on by respondents, *Szuchy* v. *Hillside Coal & Iron Co.*, 150 N. Y. 219, to support respondents' contention that "the

appellate procedure provided by the New York statute * * * in no way grants litigants vested rights to pursue an appeal."

Szuchy holds "the right to appeal is not a natural or inherent one, but rests upon the statute alone, * * *" (at p. 224). There is no authority in this holding to deny petitioners an appeal which is allowed to all other litigants.

In *National Union, etc.* v. *Arnold*, 348 U. S. 37, 43, 75 S. Ct. 92, 95, this Court held that a statutory review, as here, must be exercised without discrimination.

In *Cochran* v. *Kansas*, 316 U. S. 255, 258, 62 S. Ct. 1068, 1070, this Court held that denial of an appeal allowed others is denial of equal protection of the law, so that respondents' contention (page 5, 1st paragraph) that "An erroneous interpretation of a procedural statute by a State Court * * *" does not give this Court *certiorari* jurisdiction is erroneous when Fourteenth Amendment rights are thereby violated. *Irvin* v. *Dowd*, 359 U. S. 394, 404, 79 S. Ct. 825, 831.[3]

Petitioners have no objection to the procedure followed in *Musser* v. *State of Utah*, 333 U. S. 95, 68 S. Ct. 397 (relied on by respondents), wherein this Court remanded the matter to the State Court for its examination on the constitutional questions presented, should this Court see fit to follow this precedent in the subject proceeding.

CONCLUSION

Wherefore, it is respectfully submitted that nothing in respondents' brief establishes a basis for denial of the peti-

[3] In *Erie* v. *Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 822-3, the court proscribed discrimination against non-citizens of a state and held that federal authority may supervise state judicial action if contrary to the Constitution.

tion for a writ of *certiorari*, either on the ground of misdirection of the writ or on the merits of the issues presented in the petition.

It is respectfully submitted that, should this Court deem that error is involved, either in the direction of the writ to the Kings County Supreme Court or the prayer to review the orders of the Court of Appeals rather than the Appellate Division orders, the precedent set forth in *Bartone* v. *United States*, —— U. S. ——, 84 Ct. 21 be followed and that this Court consider the writ, rather than remit petitioners to a new proceeding which would now be time barred, in which event petitioners request leave to supplement the petition and appendix with the necessary Appellate Division record.[4]

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[4] In respect to a possible review of the Appellate Division orders, it is extremely interesting to note the case of *Taca* v. *Rolls Royce, Limited, Rolls Royce, Inc., Capital Airlines, Inc. and United Airlines, Inc.*, decided by the Appellate Division, First Department (a court of co-ordinate jurisdiction with the Appellate Division, Second Department, which made the orders herein), published July 15, 1964, on the front page of the New York Law Journal as an opinion worthy of extra attention by the legal profession, which opinion is set down verbatim below (the decisions of the Appellate Division, Second Department, in the cases at bar were without opinion except for a concurring opinion by BELDOCK, P. J. dealing only with the validity of the assignment of part of petitioner Steingold's causes of action to petitioner Ernest Rassner):

> "Taca International Airlines, S.A., a corporation of El Salvador, plaintiff-appellant, vs. Rolls-Royce of England Limited, a corporation of the United Kingdom, Rolls-Royce, Inc., a corporation of Delaware, Capital Airlines, Inc., a corporation of Delaware and United Airlines, Inc., a corporation of Delaware.
>
> Decided April 9, 1964.

(Continued on following page)

(Footnote continued from preceding page)

"*Per Curiam*—This action seeks recovery for the loss of plaintiff's aircraft as the result of a crash at Managua, Nicaragua. Plaintiff has sued several defendants, among them Rolls-Royce, Ltd., an English corporation. This defendant has moved to set aside the service on it. Service was purportedly made by service on Rolls-Royce, Inc., and Bruce Thomson. There is no question but that these persons were served, the issue being whether such service reached the moving defendant.

Rolls-Royce, Ltd., manufactures and sells motor cars and airplane engines. It also sells parts and gives service to its customers. These products are sold practically world wide and customers can get service at many places. Rolls-Royce, Ltd., owns all the stock of Rolls-Royce of Canada, Ltd., a Canadian corporation, and this company owns all the stock of Rolls-Royce, Inc. The business of Rolls-Royce, Inc., is solely in the sale of products manufactured by Rolls Royce, Ltd., and the servicing of the purchasers of these products. The three mentioned companies have some directors in common, and key executive personnel in Rolls-Royce, Inc., were former executives of either the English or Canadian company and were assigned to their positions by the parent English company. There are frequent conferences among executives of the three companies at which the policies of Rolls-Royce, Inc., are determined. Rolls-Royce, Inc., employees who require technical training are given it by Rolls-Royce, Ltd., in England. All sales literature used by Rolls-Royce, Inc., is written and published by Rolls-Royce, Ltd.

Rolls-Royce, Ltd., gets its income in several ways. It owns no automobiles, and when a sale is made to a customer it buys a car from Rolls-Royce, Ltd., in England and imports it. The sale is at a fixed price which is lower than the price to the ultimate purchaser. Rolls-Royce, Ltd., gives a warranty directly to the purchaser which Rolls-Royce, Inc., delivers with the car. Rolls-Royce, Ltd., pays Rolls-Royce, Inc., a fixed annual fee for services rendered to customers in connection with these warranties. As to airplane engines, the compensation for services is paid by Rolls-Royce of Canada, and this payment is measured by the price of the spare parts sold by Rolls-Royce, Inc.

(Continued on following page)

(Footnote continued from preceding page)

All of the net income of Rolls-Royce, Inc., goes to Rolls-Royce of Canada and appears in that company's balance sheet. As affected by the other operations of the Canadian company it then appears in the balance sheet of Rolls-Royce, Ltd.

The question is whether these facts constitute doing business in this state. Each case necessarily depends on it own facts (Chaplin v. Selznick, 293 N. Y. 529, 533). The fact that a corporation has a subsidiary does not in and of itself bring it within the state or make it amenable to process (Compania Mexicana v. Compania Metropolitana, 250 N. Y. 203). It is otherwise where the subsidiary, though nominally independent, actually functions as a department of the parent (Rabinowitz v. Kaiser-Frazer Corp'n, 198 Misc. 707, aff'd 278 App. Div. 584, aff'd 302 N. Y. 892). And this is not affected by the fact that the subsidiary is given the appearance of being an independent contractor (Goodman v. Pan American World Airways, 1 Misc. 2d 959, Eager, J, aff'd 2 A. D. 2d 707). The facts here are virtually conclusive that any claim of independence on the part of Rolls-Royce, Inc., is illusory. It is clearly a sales agent, despite the forms that would make it appear on the surface to be a purchaser.

We are not unmindful of the decision in Steingold v. Capital Airlines, Inc. (227 N. Y. S. 2d 639, aff'd 19 A. D. 2d 778), where, on similar service, the action was dismissed by this same moving defendant. The decision there was on an entirely different ground, namely, the advisability of entertaining an action by a non-resident against a foreign corporation for an accident occurring outside this state. The court concluded the equities in that case did not warrant exercise of the discretionary power to entertain the action. The question litigated here is entirely different.

The order should be reversed and the motion denied with costs to the appellant."

It will be noted of course, that except for the two Vickers Corporations, the defendants in *Taca* are the respondents in petitions 1-7 herein.

(Continued on following page)

(Footnote continued from preceding page)

In Taca, as in the case at bar, the plaintiff is a non-resident of New York State suing in a New York State Court for causes arising out of an out of state plane crash.

In *Taca,* as in the case at bar, service of process on Rolls-Royce, Ltd., was perfected by serving Rolls-Royce, Inc., as its managing agent.

In *Taca,* as in the case at bar, service on Rolls-Royce, Inc., was made by serving an officer of Rolls-Royce, Inc.

In *Taca,* as in the case at bar, Rolls-Royce, Ltd., moved to vacate service on the ground that service on Rolls-Royce, Inc. was not service on Rolls-Royce Limited.

In *Taca,* as in the case at bar, service was vacated (by New York State Supreme Court at Special Term), on the ground that service on Rolls-Royce, Inc., was not service on Rolls-Royce, Ltd.

At this point, *Taca* and the case at bar show a divergence, as, in the case at bar, the Appellate Division, Second Department, affirmed the dismissal without opinion, while, in *Taca,* the Appellate Division for the First Department reversed the dismissal with new findings that Rolls-Royce, Ltd. was doing business in New York State through and by Rolls-Royce, Inc. and, therefore, serving Rolls-Royce, Ltd., by serving an officer of Rolls-Royce, Inc., was proper and valid service, thus providing a forum in New York State for *Taca* to be heard on its cause of action arising under identical circumstances resulting in petitioner being denied a forum in New York State.

This clearly and adequately demonstrates denial of the equal protection of the law to petitioners herein in violation of the fourteenth amendment.

It is to be noted that, in *Taca,* the Appellate Division distinguishes the Special Term holding in the case at bar on an erroneous ground, stating in regard thereto:

> "* * * the decision there was on an entirely different ground, namely, the advisability of entertaining an action by a non-resident against a foreign corporation for an accident occurring outside this state. The Court concluded the equities in that

(Continued on following page)

(Footnote continued from preceding page)

case did not warrant exercise of the discretionary power to entertain the action. The question litigated here is entirely different."

Special Term's opinion herein clearly shows the above statement to be error, as Special Term said:

"This is a motion by Rolls-Royce, Ltd. The service of the summons was attempted to be made upon one Norman Miller, who, it is claimed by the plaintiff, was an officer of Rolls-Royce, Ltd. The facts submitted in the affidavit of movant indicates clearly that Mr. Norman Miller had nothing to do with Rolls-Royce, Ltd., a British Corporation, but that he was only an employee of Rolls-Royce, Inc., and had no authority to speak for Rolls Royce, Ltd. Consequently the service of the summons and under the circumstances upon him was improper. The purported service of the summons is vacated and set aside. Submit order." (Note: The reference to Miller as an officer of Ltd. is additional error, as Miller was served as an officer of Inc., not Ltd.

The Appellate Division, in *Taca*, may have mistakenly relied on the opinion in Rolls-Royce, Inc.'s dismissal which more adequately fits the said distinguishing remarks in *Taca*.

It would appear, however, that the new findings of the Appellate Division in *Taca* to the effect that Rolls-Royce, Ltd., is doing business in New York through and by its wholly owned subsidiary Rolls-Royce, Inc., supersede the findings to the contrary herein by Special Term, as the *Taca* Court is a higher court of appellate jurisdiction.

The affirmance herein by the Appellate Division, Second Department, without opinion does not constitute an acceptance or adoption of Special Term's findings under New York law (*Estate Property Corporation* v. *Hudson Coal Co.*, 259 A. D. 546 19 N. Y. S. 2d 857, 860, affirmed no opinion 284 N. Y. 722), so that there actually is no conflict between the Appellate Division, First Department and the Appellate Division, Second Department, which are courts of equal and co-ordinate jurisdiction. The conflict is between Special Term's findings in the case at bar and the Appellate Division's findings in *Taca*.

(Continued on following page)

It is further respectfully submitted that, on the merits, the petition ought to be granted and the writ issue to review the determination of the New York State Court of Appeals.

Respectfully submitted,

JACOB RASSNER,
Counsel for Petitioners.

(Footnote continued from preceding page)

Again, as an appeal court of higher jurisdiction, the Appellate Division's findings in *Taca* re this respondent Rolls-Royce, Ltd., must prevail and constitute *res judicata* against respondent Rolls-Royce, Ltd., in accordance with New York Law, as the issues in *Taca* were identical with the issues herein and Rolls-Royce, Ltd., litigated the said issues in *Taca*. *Israel* v. *Wood-Dolson*, 1 N. Y. 2d 116.

APPENDIX E

Copy of Order With Notice of Entry Served By Respondent Rolls-Royce, Inc. (On December 13, 1963)

COURT OF APPEALS

STATE OF NEW YORK

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,

Appellant,

—against—

CAPITAL AIRLINES, INC., UNITED AIRLINES, INC., VICKERS-ARMSTRONGS, INC., VICKERS-ARMSTRONGS (AIRCRAFT) LTD., also known as VICKERS-ARMSTRONGS, LTD., ROLLS-ROYCE, INC., and ROLLS-ROYCE, LIMITED,

Respondents.

NOTICE OF ENTRY

MOTION No. 784

SIR:

PLEASE TAKE NOTICE that an order, of which the within is a copy certified by the Clerk of the Court of Appeals, was duly entered herein and filed with the Clerk of the Court of Appeals on the 27th day of November, 1963.

Appendix E

Dated: New York, New York
December 13, 1963

Yours, etc.

GILBERT, SEGALL AND YOUNG
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Appendix E

STATE OF NEW YORK,
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-seventh day of November A. D. 1963.

Present:

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

---

2 Mo. No. 784

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,

Appellant,

vs.

CAPITAL AIRLINES, INC., UNITED AIRLINES, INC., VICKERS-ARMSTRONGS, INC., VICKERS-ARMSTRONGS (AIRCRAFT) LTD., a/k/a VICKERS-ARMSTRONGS, LTD., ROLLS-ROYCE, INC., and ROLLS-ROYCE, LIMITED,

Respondents.

Motions having heretofore been made herein upon the part of respondents Vickers-Armstrongs (Aircraft) Ltd. and Rolls-Royce, Inc. to dismiss the appeals taken by the appellant from the orders of the Appellate Division, Second Department, entered July 8, 1963 which affirmed (1) an order of the Supreme Court dated and entered April 6,

1962 granting the motion of defendant Vickers-Armstrongs (Aircraft) Ltd. to vacate the service of the summons upon said defendant and dismissed the complaint as against it, and (2) an order of the Supreme Court dated and entered April 12, 1962 granting the motion of defendant Rolls Royce, Inc. to vacate the service of the summons upon said defendant and dismissed the complaint as against it, and after having heard William J. Junkerman, Esq., in support of said motion and Jacob Rassner, Esq., in opposition thereto, and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motions be and the same hereby are granted and the appeals dismissed upon the ground there is no constitutional question directly involved.

A copy

GEARON KIMBALL
Deputy Clerk

(SEAL)

APPENDIX E

Copy of Order With Notice of Entry Served By Respondent Rolls-Royce, Ltd. (On December 13, 1963)

COURT OF APPEALS
STATE OF NEW YORK

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,

Appellant,

—against—

CAPITAL AIRLINES, INC., UNITED AIRLINES, INC., VICKERS-ARMSTRONGS, INC., VICKERS-ARMSTRONGS (AIRCRAFT) LTD., also known as VICKERS-ARMSTRONGS, LTD., ROLLS-ROYCE, INC., and ROLLS-ROYCE, LIMITED,

Respondents.

NOTICE OF ENTRY

MOTION No. 784

SIR:

PLEASE TAKE NOTICE that an order, of which the within is a copy certified by the Clerk of the Court of Appeals, was duly entered herein and filed with the Clerk of the Court of Appeals on the 27th day of November, 1963.

Appendix E

Dated: New York, New York
December 13, 1963

Yours, etc.

GILBERT, SEGALL AND YOUNG
Attorneys appearing specially for
Defendant-Respondent, Rolls-Royce
Limited
Office and P. O. Address
405 Park Avenue
New York, New York 10022

To:

JACOB RASSNER, ESQ.
Attorney for Plaintiff-Appellant
Office and P. O. Address
15 Park Row
New York, New York 10038

Appendix E

STATE OF NEW YORK,
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-seventh day of November A. D. 1963.

Present:

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

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2 Mo. No. 784

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,

Appellant,

vs.

CAPITAL AIRLINES, INC., UNITED AIRLINES, INC., VICKERS-ARMSTRONGS, INC., VICKERS-ARMSTRONGS (AIRCRAFT) LTD., a/k/a VICKERS-ARMSTRONGS, LTD., ROLLS-ROYCE, INC., and ROLLS-ROYCE, LIMITED,

Respondents.

A motion having heretofore been made herein upon the part of the respondent Rolls-Royce Limited to dismiss the appeal taken by the appellant from the order of the Appellate Division, Second Department, entered July 8, 1963 which affirmed an order of the Supreme Court made and entered April 12, 1962 granting the motion of defendant

Appendix E

Rolls-Royce, Limited, to vacate the service of the summons upon it, and after having heard William J. Junkerman, Esq., in support of said motion and Jacob Rassner, Esq., in opposition thereto and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed for non-finality.

A copy

GEARON KIMBALL
Deputy Clerk

(SEAL)